

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LISA MUSHALL,

Plaintiff,

v.

Case No. 06-C-237

CECIL'S DINER, INC. et al.,

Defendants.

ORDER

Wilson Mutual Insurance Company intervened in this action and on October 30 it filed a motion for summary judgment, asserting that the policy it issued to the defendants does not cover the claims brought by the plaintiff in this case. The motion will be granted.

Some of the defendants responded to the motion immediately by noting that they had already conceded there was no coverage under the Wilson policy. Plaintiff Lisa Mushall and defendant John Schneider have not responded to Wilson's motion within the time allowed by Civil Local Rule 7.1(c). Nor did they apparently respond to Wilson's earlier request that they admit coverage was lacking. Failure to admit or object within 30 days constitutes an admission. Fed. R. Civ. P. 36(a). Because the motion is uncontested and because all parties to this lawsuit have conceded either explicitly or implicitly that coverage is lacking, Wilson's motion for summary judgment is GRANTED, and Wilson Mutual is to be dismissed from this action.

As I find no just reason for delay, *see* Fed. R. Civ. P. 54(b), a declaratory judgment will be entered indicating that the applicable Wilson insurance policy BR150332 does not provide

indemnification or a defense to defendants Cecil's Diner, Inc. or Eliseo Rebolledo for the claims brought in the present lawsuit.

SO ORDERED this 6th day of December, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge